STATE OF MICHIGAN

COURT OF APPEALS

DEBRA S. WARSHEFSKI,

Plaintiff-Appellant,

v

JOSEPH R. PIECHOTTE,

Defendant-Appellee.

UNPUBLISHED
September 14, 2006

No. 268919
St. Clair Circuit Court
LC No. 04-002066-DP

Before: Davis, P.J., and Murphy and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting the parties joint legal and physical custody of their minor son. We affirm.

Plaintiff first argues that the trial court failed to make the necessary factual findings in support of its determination that the parties had a joint established custodial environment with respect to the child. This error, plaintiff alleges, requires reversal. Concerning the established custodial environment, a trial court's factual finding regarding the existence of such an environment is reviewed under the great weight of the evidence standard and will be affirmed unless the evidence clearly preponderates in the opposite direction. *Vodvarka v Grasmeyer*, 259 Mich App 499, 507; 675 NW2d 847 (2003); *Fletcher v Fletcher*, 229 Mich App 19, 24; 581 NW2d 11 (1998), citing MCL 722.28. In reviewing findings of fact, this Court defers to the trial court's determination on issues of credibility. *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000). Further, pursuant to MCL 722.28, questions of law in custody cases are reviewed for clear legal error. *Fletcher*, *supra* at 24.

MCL 722.27(1)(c) provides in pertinent part:

> The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

The trial court can change custody when an established custodial environment exists, but only if clear and convincing evidence is presented showing that a change would serve the best interests of the child. *Foskett v Foskett*, 247 Mich App 1, 6; 634 NW2d 363 (2001). "This higher standard also applies when there is an established custodial environment with both parents." *Id.*, citing *Jack v Jack*, 239 Mich App 668; 610 NW2d 231 (2000). An established custodial environment can exist in more than one home. *Mogle*, *supra* at 197-198. Before a court may consider the best interest factors regarding child custody, it must determine, as a question of fact, whether an established custodial environment already exists. *Id.* at 197.

The Legislature's mandate that an established custodial environment not be changed absent clear and convincing evidence was intended to "erect a barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive changes of custody orders[,]" *Heid v AAASulewski (After Remand)*, 209 Mich App 587, 593-594; 532 NW2d 205 (1995), and to prevent the removal of children except in the most compelling of cases, *Vodvarka*, *supra* at 509, citing *Foskett*, *supra* at 6. "Custody orders, by themselves, do not establish a custodial environment." *Bowers v Bowers*, 198 Mich App 320, 325; 497 NW2d 602 (1993); see also *Baker v Baker*, 411 Mich 567, 579; 309 NW2d 532 (1981). Rather, as indicated by our Supreme Court in *Baker*, *id.* at 579-580,

> [s]uch an environment depend[s] instead upon a custodial relationship of a significant duration in which [the child] was provided the parental care, discipline, love, guidance and attention appropriate to [the child's] age and individual needs; an environment in both the physical and psychological sense in which the relationship between the custodian and child is marked by qualities of security, stability and permanence.

The cases cited by plaintiff in support of her position involved situations in which the trial court failed to make any determination as to the established custodial environment. Here, the trial court rendered a determination on the issue, noting that it took into consideration the evidence, the parties' arguments, and the statute. We find no basis to remand the case for further fact-finding regarding the underlying reasons for the court's determination that a joint established custodial environment existed. Following hearings or trials in domestic relations actions, the trial court must make findings of fact as provided in MCR 2.517. MCR 3.210(D). MCR 2.517(A)(2) provides, "Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." Findings are sufficient if it appears that the trial court was aware of the issues in the case, the court correctly applied the law, and where appellate review would not be facilitated by requiring further explanation. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). The finding of fact of consequence here regarded the existence of the established custodial environment, which finding was made by the trial court. Assuming, without deciding, that the trial court had to elaborate with respect to facts underlying its factual determination that there existed a joint established custodial environment, we deem the record sufficient when considering the court's various findings on related matters, such as the best interest factors. We also conclude that, while it is a close call, the court's determination that there existed a joint established custodial environment was not against the great weight of the evidence. Giving the trial court the required deference, reversal is unwarranted.

There was undisputed testimony that defendant was genuinely involved with the child to some degree since he was born. Defendant testified that the child and plaintiff stayed over at his house, a house with a room set aside specifically for the child, on a regular basis for the first six months of the child's life.[1] Defendant testified that the child looked equally to both plaintiff and himself for guidance and comfort when he was upset. Defendant provided significant resources in the form of over $800 per month toward the necessities of life for the child, and the trial court found that he was better able to provide those necessities than plaintiff. Further, the parenting time defendant spent with the child was also significant, including three out of five weekdays and overnights every other weekend. Given this evidence, we cannot conclude that the evidence clearly preponderates in a direction opposite the court's findings. *Vodvarka, supra* at 507. Accordingly, because we uphold the trial court's finding that there was a joint established custodial environment, and because the trial court granted the parties joint physical custody, the trial court did not err relative to the burden of proof and the custody disposition.

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Bill Schuette

[1] To the extent that there was conflicting testimony, the trial court is the proper arbiter regarding the credibility of witnesses, not this Court. *Mogle, supra* at 201.